STATE OF CALIFORNIA — STATE AND CONSUMER SERVICES AGENCY PETE WILSON, *Governor*

State of California Department of Consumer Affairs

LEGAL AFFAIRS
400 R STREET, SUITE 3090
SACRAMENTO, CA 95814-6200

August 15, 1996

DOCKET FILE COPY ORIGINAL

OVERNIGHT FEDERAL EXPRESS MAIL

RECEIVED
16 1996
FCC MAIL ROOM

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: In the Matter of Telephone Number Portability - CC Docket No. 95-116 RM 8535

Gentlepersons:

Enclosed please find an original and 17 copies of the "Comments of the California Department of Consumer Affairs on the Federal Communications Commission's Request for Further Comments on Cost Recovery Of Local Telephone Number Portability". Please file this document in the above matter, and return an endorsed copy to me in the enclosed stamped, self-addressed return envelope. Pursuant to FCC Rule 1.419, we have enclosed an additional five copies of our Reply Comments for distribution to each of the Commissioners.

Thank you for your assistance.

Sincerely,

Valerie L. McZeek
VALERIE L. McZEEK
Office Technician

Enclosures

G:\LS\VJT\NOPORTAB\FCCLTRCV.815

0+17

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of	)	CC Docket No. 95-116
	)	
Telephone Number Portability	)	RM 8535
	)	

RECEIVED

16 1996

FCC ... L ROO...

COMMENTS OF

THE CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS

ON THE FEDERAL COMMUNICATIONS COMMISSION'S

REQUEST FOR FURTHER COMMENTS

ON COST RECOVERY OF LOCAL TELEPHONE NUMBER PORTABILITY

VIRGINIA J. TAYLOR

Attorney for

CALIFORNIA DEPARTMENT OF
CONSUMER AFFAIRS
400 R Street, Suite 3090
Sacramento, CA 95814-6200
(916) 445-5126

August 15, 1996

EXECUTIVE SUMMARY

In fashioning all aspects of LNP, including cost recovery, the FCC should focus on the effect of LNP on the interests of all consumers. That means that LNP should be viewed from the perspective of all consumers -- not just those who want to both change their provider and port their existing number, but also those consumers who so not wish to change their provider, those who would prefer to change their existing number rather than pay the cost to retain it, and especially those who may never have the option to take advantage of LNP.

In applying this policy to the recovery of costs for LNP, the DCA makes the following comments and recommendations:

- the FCC should confer with technology experts to determine which carrier-specific costs are direct costs of LNP and which are not;
- "competitively neutral" from a consumer standpoint means that the customers of one local exchange telecommunications provider (whether an incumbent or a new provider) will not pay a share of the LNP implementation costs that is disproportionate to the LNP implementation costs paid by customers of other local exchange telecommunications providers, and that no customer of any provider can avoid paying his or her share of the cost to establish LNP by changing providers;
- implementation costs of shared facilities should be recovered on a regional basis from all telecommunications providers serving areas where LNP is, or will be, deployed.

- the federal Act does not specifically require that the distribution of ongoing LNP costs be on a "competitively neutral" basis;
- LNP implementation costs should be distributed in a competitively neutral manner, such as distribution among all telecommunications providers serving areas where LNP is implemented, in proportion to the number of lines served by the providers, through an annual assessment that amortizes those costs at a exponentially increasing pace over a period that is long enough to reflect the increases in market volume and the changes in market share that are likely to result from the competition that LNP facilitates;
- ongoing LNP costs might be appropriately distributed to the cost causers;
- LNP database recurring costs recovery could apply a two-tiered approach -- a flat, minimum assessment on all providers serving the region, and an assessment of an additional fee on those providers who use the database, in proportion to their use thereof;
- the cost of database queries should be on a fee-per-query basis.
- it may be appropriate to require CLECs to share some portion of the ILECs' carrier-specific direct costs to implement LNP;
- recovery of LNP implementation costs from consumers should be accomplished through the use of an all end user surcharge;
- it might be appropriate to allow market forces to dictate the manner in which ongoing LNP costs are recovered.

TABLE OF CONTENTS

(h:\wpfiles\telecmtn\pleadgs\tofc.fcc)

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of	)	CC Docket No. 95-116
	)	
Telephone Number Portability	)	RM 8535
	)	

COMMENTS OF
THE CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS
ON THE FEDERAL COMMUNICATIONS COMMISSION'S
REQUEST FOR FURTHER COMMENTS
ON COST RECOVERY OF LOCAL TELEPHONE NUMBER PORTABILITY

The California Department of Consumer Affairs (DCA) hereby respectfully submits the following comments in response to the Federal Communications Commission's (FCC) request for further comments in its First Report and Order and Further Notice of Proposed Rule Making (FNPRM) regarding telephone number portability.

I. INTRODUCTION.

The purpose of the Telecommunications Act of 1996 ("the federal Act") is "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." (Preamble to the federal Act.)

The ultimate goals of moving the telecommunications industry from a monopoly market and an oligopoly market to a fully competitive market are to provide all telecommunications customers with the widest possible choice of providers and services at the lowest possible prices. Both of those goals are the natural consequence of a fully competitive marketplace whose multiple participants compete on both quality and price. The promises of diversity of services and lower prices are the key factors that have engendered legislative and popular support for an open and free competitive market in telecommunications.

One of the reasons the DCA has become involved in the FCC's proceeding regarding telephone number portability, and in the work of the California Local Number Portability Task Force (Task Force), is that the DCA shares these goals, and does not want the opening of the local exchange market to competition to result in a rash of consumer complaints that competition has resulted in <u>increased</u> rates or <u>inferior</u> services. The policies which will govern the recovery of costs incurred to implement local number portability (LNP) are particularly important in that regard.

II. IN FASHIONING ALL ASPECTS OF LNP, INCLUDING COST RECOVERY, THE FCC'S FOCUS SHOULD BE ON THE INTERESTS OF <u>ALL</u> CONSUMERS.

A. Benefits LNP Confers on Providers.

Many have argued that LNP is essential to a meaningfully competitive local exchange telecommunications marketplace. Without it, they argue, few customers will be willing to change providers if doing so means they must change their telephone number. They argue that, without LNP, the new competing local exchange carriers (CLECs) would have to offer significant discounts off the incumbent local exchange carriers' (ILECs) current rates for local exchange service in order to obtain customers, and that neither resale rates nor the costs of building competing networks will allow CLECs to offer those substantial discounts. They point out that factors which influence a customer's reluctance to change providers include not only the natural inertia to change providers and telephone numbers, but also the costs associated with a number change, such as reprinting checks, business cards, letterhead, advertisements, etc.

Congress appears to have recognized the concern of CLECs when it passed Section 251(b)(2) of the federal Act, which provides that all local exchange carriers have a duty to provide number portability, to the extent technically feasible. Section 251(e)(2) of the federal Act provides that "[t]he cost of establishing telecommunications . . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." (Emphasis added.)[1] Section 3(a)(49) defines "telecommunications carrier" as "any provider of telecommunications services."[2] Thus, Congress has mandated that, with a few possible exceptions, all telecommunications providers must share in the cost of establishing number portability.

At least initially, it is anticipated that virtually all of the numbers transported from one carrier to another without change ("ported") will be by customers of ILECs who choose to obtain service from CLECs, rather than the other way around. While the direct cause of most of the costs of LNP will be customers of CLECs, Congress may have concluded that the cost of establishing LNP should not be borne solely by the immediate cost causers -- the

---

[1] The DCA notes that the federal Act addresses only the cost of establishing number portability, and does not clearly address how ongoing costs of operating number portability should be treated. That issue will be discussed later in these comments.

[2] However, it excludes aggregators of telecommunications services, and allows the FCC to determine whether fixed and mobile satellite service providers will be considered common carriers for purposes of the federal Act. Moreover, the federal Act appears to exempt small and rural providers from the requirement to provide LNP.

CLECs and their customers. Assuming that all consumers enjoy a competitive telecommunications market, that conclusion might be justified on the theory that a properly functioning competitive market will provide benefits to everyone, including those customers who choose never to change providers, in terms of both diversity of services and relatively lower prices.[3] Moreover, ILECs eventually may gain customers from other ILECs and CLECs, and those customers too may want to port their number.

Thus, in the long term, both ILECs and CLECs may directly benefit from LNP. Based on that analysis, it appears that a cost recovery approach which comports with the federal Act may be one which does not impose all LNP implementation costs on the immediate cost-causer. While this approach means that the costs of LNP ultimately will be spread across the broadest possible customer base, it also spreads the cost to people who may never receive any benefit from LNP. Therefore, it is appropriate to consider whether this interpretation of the federal Act can be justified.

B. Extent of Benefits LNP Confers on Consumers.

Although different surveys and studies provide widely disparate data regarding the extent to which the absence of LNP would deter customers from changing providers, the DCA believes that LNP will materially enhance and accelerate the development of local exchange competition, and for that reason the DCA has qualifiedly supported the concept of LNP.

---

[3] This conclusion is more difficult to justify with respect to customers who are not provided the benefits of a competitive telecommunications market.

At the same time, the DCA recognizes that LNP is of little or no concern to some consumers. Most consumers of low or nearly-low income may not have their telephone numbers printed on numerous documents, such as checking accounts, business cards, letterheads, or Yellow Pages advertisements, that would need to be reprinted at great cost or inconvenience. Therefore, they may not be materially concerned about changing telephone numbers. Consumers who are not likely to comparison shop for telephone services may be almost totally disinterested in LNP. Even those consumers who might want to change providers and retain their existing telephone number might not be willing to do so if they are required to pay an excessive cost. Thus, it seems that the advantages of LNP are ones that probably would be enjoyed mostly by economically "upscale" consumers, especially those engaged in some form of business.

Moreover, today many consumers face the prospect of new stationery, business cards, etc., that will inevitably accompany multiple telephone numbers, E-mail addresses, etc. Additionally, area code splits will necessitate new numbers for numerous consumers. While the stability promised by LNP has a value for which some consumers may be willing to pay a small price, stability may not be a high priority in much of today's fast-changing telecommunications environment. People have come to expect change because of the benefits that usually accompany change, and people are not always willing to pay a lot to avoid it.

One should not conclude that because LNP may well spur competition, it is <u>essential</u> to competition. There are, no doubt, some customers who, if given a sufficient incentive, such as significantly enhanced services and/or reduced rates, would be willing to change providers even if it required that they change their telephone number. LNP enables new competitors to attract more customers <u>at relatively higher prices</u> than providers could charge if LNP were not available. In other words, LNP provides CLECs with the opportunity to make higher profits because, with LNP, the price discount that CLECs would need to offer in order to attract customers from the ILECs probably would be significantly less than would be necessary if LNP did not exist.[4] Additionally, at least at this stage, LNP provides only <u>service provider</u> portability; LNP will not allow a customer who moves outside his or her local calling area to retain the same telephone number.

C. Who Should Bear The Costs of LNP?

Even if one concedes that LNP should be implemented on the basis that it is necessary for competition to develop, requiring customers who do not port their number to pay for LNP is problematic. It may be more justifiable with respect to the costs for implementing LNP, but certainly less so for the ongoing costs of LNP.

One of the foundations for universal service has been that all telecommunications customers benefit from having the maximum number of persons connected to the network. Direct benefits include the ability of one person to communicate with any other person in the nation (or world) through use of the telephone system. Less obvious but highly important benefits include more efficient use of plant, and the resulting reduction in the cost per customer served. These benefits are direct, real, and material, to both providers and consumers.

---

[4] This assumes that the ILECs' rates are sufficiently above cost that CLECs will be able to attract customers by offering rates sufficiently below those of the ILECs. Were that not the case, one could question whether consumers will actually benefit from a competitive market when the costs of opening the local exchange market to competition, including the cost of LNP, are considered.

Those same arguments, however, are less compelling when applied to LNP. LNP does not increase the number of persons with whom one can connect through the telephone system, and since it is expensive to implement, it promises to increase, rather than decrease, the cost per customer served. The benefits to customers are much more problematical, and indeed might not exceed the costs that consumers will bear to make it available.

In fashioning LNP policy and implementing LNP, one should not overlook the fact that although one of the purposes of a competitive local exchange market is to enable consumers to use competing providers, there will be some consumers who have no desire to change providers, either now or in the future. There also will be those who do not find changing telephone numbers such an inconvenience that they would be willing to pay an extra amount for the privilege of not having to change their number. In addition, it is difficult to justify requiring ILECs who are not required to participate in LNP and may never be faced with competition, and their customers who may never obtain the benefits of a competitive marketplace, to help pay the costs of LNP.

All of those customers may validly assert that they do not benefit from LNP, and that, therefore, they should not be forced to help pay for it. One could counter that they directly benefit from LNP whenever they call a ported customer, because rather than obtaining a referral recording and then dialing the new number of the called party, they are directly connected to the called party. Those customers might respond that they would prefer to listen to a recording and redial rather than pay the cost of LNP. Beyond that, the only benefit that LNP could be said to confer on customers who do not port their number is the availability of the option to change their mind. With respect to those customers who do not have the option to change providers, even that benefit is non-existent.

Despite these valid concerns, the federal Act recognizes the importance of local number portability to a truly competitive telecommunications marketplace. Therefore, the DCA does not advocate that LNP should be abandoned. Nonetheless, the DCA believes it is important to keep LNP in perspective, and to view LNP from the perspective of <u>all</u> consumers -- not just those who want to both change their provider and port their existing number, but also those consumers who do not wish to change their provider, those who would prefer to change their existing number rather than pay the cost to retain it, and especially those who may never have the option to take advantage of LNP. In fashioning all aspects of LNP policy and implementation, the FCC should take into account the interests of <u>all</u> consumers

All of this relates most directly to how the costs of LNP should be allocated and recovered. The ultimate issue which follows from this discussion is -- what constitutes a "competitively neutral" LNP cost recovery mechanism that is fair to <u>all</u> consumers?

III. RESPONSES TO THE FCC'S SPECIFIC REQUESTS FOR FURTHER COMMENT.

With that policy background in mind, the DCA will respond to several of the issues on which the FCC requests further comment in its FNPRM. For the ease of the Commissioners and their staff, to the extent possible, these comments will follow the order in which the issues are discussed in the FNPRM.

A. General Parameters of LNP Cost Recovery.

1. <u>Paragraph 208</u>. The FCC tentatively concludes that there are three types of

costs involved in providing long-term LNP:

> (1) costs incurred by the industry as a whole, such as those incurred by the third-party administrator to build, operate, and maintain the databases needed to provide number portability; (2) carrier-specific costs directly related to providing number portability (e.g., the costs to purchase the switch software implementing number portability); and (3) carrier-specific costs not directly related to number portability (e.g., the costs of network upgrades necessary to implement a database method).

The DCA agrees with the FCC's general categorization of the costs of LNP. However, because of the DCA's limited technical expertise, the DCA is unable at this time to determine exactly where the line should be drawn between those costs directly related to the implementation of LNP, and those which are only marginally related. For example, some carriers have asserted that implementation of LNP may use significant SS7 and/or AIN capacity that the carriers otherwise would have used to provide special services; as a result, carriers may need to upgrade those technologies or add additional units in order to handle both LNP and the special services. If such technology upgrades would not need to occur for several years, if at all, absent the implementation of LNP, then it is possible that those costs, or some portion of them, should be treated as LNP specific costs.

However, determining the extent to which such upgrades are necessary, rather than merely desirable, as a result of the implementation of LNP, could be problematic. The DCA recommends that the FCC confer with technology experts to determine the extent to which carrier-specific costs are directly related to the implementation of LNP.

2. Paragraph 209. The FCC seeks comment on its tentative conclusion that "the 'competitively neutral' standard in section 251(e)(2) applies only to the costs of establishing

number portability, and not to cost recovery of carrier-specific, non-number portability-specific costs, such as upgrades to SS7 or AIN technologies."

The DCA agrees that recovery of LNP costs should be limited to those costs which providers must incur in order to implement LNP. There is reason for concern that providers may attempt to allocate costs to LNP implementation even when those costs are only marginally caused by LNP implementation, particularly if providers are allowed to recover their costs of LNP implementation from other providers and/or from the telecommunications customers of all providers. With the caveat expressed above in response to Paragraph 208, the DCA agrees in general with this conclusion.

Paragraph 209 of the FNPRM also requests comment on the FCC's tentative conclusion that "section 251(e)(2) does not address recovery of those costs from consumers, but only the allocation of such costs among carriers."

With respect to how the costs of LNP will be passed on to telecommunications customers, some analysts have concluded that Section 251(e)(2) impliedly reflects the determination of Congress that all telecommunications customers, and not just those who choose to change telecommunications carriers without changing their telephone number ("port their number"), will benefit from local number portability. Therefore, they argue, the federal Act requires that all telecommunications customers, and not just those who choose to port their number, should pay for the cost of number portability.

The DCA believes that the plain language of the federal Act supports the FCC's tentative conclusion that the federal Act does not address the method in which LNP costs will be recovered from consumers.

As a result, it could be argued that the FCC should not regulate the method of recovery of LNP costs from consumers -- that those choices should be made either by state regulators, or by the providers themselves. In fact, some providers have argued that they should be allowed to decide whether they will recover those costs from their customers, or will absorb the costs in other ways; and if they elect to recover those costs from customers, they argue that they should be allowed to select the manner in which they will do so.

The DCA believes that the costs of LNP will be recovered from consumers whether or not the FCC takes any action with respect to how, when, in what amount, and from whom they will be recovered. The notion that providers and their shareholders are going to absorb those costs is a ruse.

Therefore, the issues which must be addressed are whether the FCC, or state regulators, or both, should regulate that cost recovery, and if so, the manner in which those costs should be recovered. The DCA discusses those issues in its response to Paragraphs 223 and 224, below.

3. Paragraph 210. In this paragraph, the FCC seeks comments on two principles with which the FCC tentatively concludes any competitively neutral cost recovery mechanism should comply:

> (1) a competitively neutral costs recovery mechanism should not give one service provider an appreciable incremental cost advantage over another service provider, when competing for a specific subscriber; and (2) a competitively neutral cost recovery mechanism should not have a disparate effect on the ability of competing service providers to earn a normal return.

The DCA agrees with these principles as far as they go. However, from a consumer perspective, "competitively neutral" means that, in areas where competition exists and LNP is available, the customers of one local exchange telecommunications provider (whether an incumbent or a new provider) will not pay a share of the LNP implementation costs that is disproportionate to the LNP implementation costs paid by customers of other local exchange telecommunications providers. In that way, the LNP implementation costs will be distributed in a way which neither deters, nor encourages, telecommunications customers to change providers, because customers would not be able to avoid paying for, or would not pay a lower portion of the cost of, LNP implementation by changing providers.

Thus, the DCA believes that "competitively neutral" means that: (1) all customers of all providers share equally in supporting the cost to establish LNP;[5] and, (2) no customer of any provider can avoid paying his or her share of the cost to establish LNP by changing providers. In proposing a cost recovery mechanism for LNP, the DCA will apply those principles, and urges providers and regulatory bodies to do the same.

B. Recovery of LNP Costs for Shared Facilities.

4. Paragraph 212. The FCC seeks comment on "whether the database administrator(s) selected through the NANC should recover the costs of facilities shared by all telecommunications carriers for the provision of long-term number portability through a charge assessed only on those carriers using the databases or on all carriers whether or not they use the databases," and "whether such costs, if recovered from all carriers, should be recovered on a nationwide or regional basis."

[5] The DCA proposes that the most equitable method for spreading the cost of LNP implementation across all customers is through a surcharge based on proportion of usage. This will be discussed further in response to Paragraph 223.

The FCC has ordered that LNP be implemented in the 100 largest Metropolitan Statistical Areas (MSAs) in the nation over a period of 14 months.[6] LNP in smaller MSAs must be implemented only upon the specific request of a CLEC.[7] Moreover, Section 251(f)(1) of the federal Act provides an exemption for rural LECs from the requirement to open their markets to competition, and Section 251(f)(2) appears to provide an exemption from the provision of LNP by small and rural LECs. The FCC will decide in its Local Competition Notice of Proposed Rulemaking the extent to which the federal Act exempts small, rural telecommunications providers from a requirement to open their markets to competition, and to provide LNP.[8]

Both because of the exemptions provided in the federal Act for small and rural LECs, and the manner in which the FCC has order that LNP be implemented, it is entirely possible that many portions of the nation will never reap the benefits of competition in the telecommunications market, and will never have LNP. Therefore, it seems neither fair, nor in the best interest of those consumers who will not enjoy telecommunications competition or LNP, to require them to help pay for something from which they will not benefit.

For those reasons, and as more specifically addressed below in comments to Paragraph 216, the DCA believes that the costs of shared facilities generally should be assessed only on those carriers in areas where LNP is implemented.

---

[6] FNPRM, paragraph 77.

[7] FNPRM, paragraph 80.

[8] FNPRM, paragraph 83.

The FCC has ordered that databases be deployed on a regional basis.[9] Moreover, the costs associated with those databases may vary by region, due in part to factors such as the number of customers served by the database, the types of telecommunications technologies deployed in the local exchange networks in the region, etc. Therefore, the DCA believes that costs should be assessed and recovered on a regional basis.

5. Paragraph 213. The FCC seeks comment on its tentative conclusion that "the recovery of the costs associated with these databases should be allocated in proportion to each telecommunications carrier's total gross telecommunications revenues minus charges paid to other carriers."

As noted above, the DCA believes that the federal Act makes a significant and explicit distinction between allocation of the costs to implement LNP, and the ongoing costs to provide LNP -- the federal Act's discussion of the distribution of LNP costs is limited to the cost of establishing LNP; it does not specifically address distribution of the ongoing costs to provide LNP. Because Section 251(e)(2) of the federal Act applies only to the costs to establish LNP, its requirement that LNP costs be borne by all telecommunications carriers on a competitively neutral basis does not explicitly apply to ongoing LNP costs. That approach comports both with the standard practice of the FCC, and with the functioning of a competitive marketplace, that a cost generally should be imposed on the cost causer.

In accordance with the distinction made in the federal Act between implementation and ongoing LNP costs, the DCA believes it may be appropriate for the FCC and state

---

[9] FNPRM, paragraph 91.

regulators to require that the ongoing costs of LNP be recovered in a manner different from the manner in which LNP implementation costs are recovered.

With respect to the initial costs of those shared facilities relative to implementing LNP, some providers have argued that because new CLECs will begin providing service at different times, it will be difficult to allocate costs to implement LNP on a competitively neutral basis. The DCA recognizes that legitimate concern. Some providers argue that shared costs should be borne by all providers in proportion to their customer base. However, since many CLECs initially may have little or no customer base when LNP is implemented, that approach means that the cost causer possibly might pay virtually nothing to implement LNP.

As a practical matter, many of the initially-competing CLECs may not have the financial capacity to bear LNP implementation costs at the outset of competition. Yet, at least some of these competitors will become successful telecommunications providers with ample financial ability to share the costs of the same LNP that contributed to their success. Hence, a truly "competitively neutral" approach might have to take account of the future changes in market shares enjoyed by the various providers.

For example, the costs to implement LNP might be borne by all telecommunications providers serving areas where LNP is implemented, in proportion to the number of lines served by the providers,[10] through an annual assessment that amortizes those costs at a

---

[10] Another alternative would be to assess the costs based on a percentage of the gross revenues received from all of the customers of those providers. That alternative is less desirable because it imposes greater LNP costs on those providers who are most efficient and successful in operating their entire businesses, rather than imposing the cost based on a factor reasonably related to the cost of LNP.

exponentially increasing pace over a period that is long enough to reflect the increases in market volume and the changes in market share that are likely to result from the competition that LNP facilitates. A plan of this kind would not only seem to be competitively neutral; it also would seem to comport with the "customer necessity" approach to deregulation that the DCA has advocated. Moreover, it would help avoid imposing an inequitable share of the cost burden of LNP on those unsophisticated and low-income consumers who likely will never be active comparison shoppers for telecommunications services, or, if they change providers, would not have a strong reason to decline to change their numbers.

The DCA will discuss treatment of the ongoing costs of those shared facilities in its comments to Paragraphs 216-219.

6. Paragraph 216. The FCC seeks comments on its tentative conclusion in Paragraph 216 that:

> the number portability costs of facilities shared by all carriers fall into three subcategories: (a) non-recurring costs, including the development and implementation of the hardware and software for the database; (b) recurring (monthly or annually) costs, such as the maintenance, operation, security, administration, and physical property associated with the database; and (c) costs for uploading, downloading, and querying number portability database information.

The DCA agrees that the first two subcategories of costs identified in Paragraph 216 are costs which are appropriately shared among all carriers in areas where LNP is offered, because it is anticipated that all carriers will benefit from LNP and, thus, will be a source of the cause of those costs.

However, with respect to the third subcategory of costs, the DCA is not convinced that those costs should be considered a shared cost. Although it may be a subcategory of costs which all providers incur, it is not one which they will incur in equal proportion.

7. Paragraph 217. In this paragraph, the FCC seeks comment on "whether the first two subcategories, non-recurring and recurring costs, should be recovered through monthly charges to the individual carriers using the database, allocated in proportion to each carrier's gross telecommunications revenues net of payments to other carriers, or from all carriers operating in areas where number portability is offered."

The DCA notes that while the first subcategory of costs constitutes LNP implementation costs, the second subcategory of costs constitutes ongoing costs.

Therefore, with respect to the first subcategory of costs, the DCA believes its proposals for cost recovery discussed above in its comments to Paragraph 213 should be applied to those costs.

With respect to the second subcategory of costs, the DCA believes that a two-tiered approach to cost recovery may be most appropriate. For instance, because to some extent those costs must be incurred so that the database is available for use by all providers in the region, irrespective of whether an individual provider actually uses the database, a flat, minimum assessment on all providers serving the region may be appropriate. It also may be appropriate to assess an additional fee on those providers who use the database, in proportion to their use thereof. That approach seems to most fairly spread those costs on the cost causers, recognizing that to some extent, even providers who may not then use the database cause the ongoing costs to maintain the database.

Because there may be many areas of the nation which do not reap the benefits of LNP, the DCA agrees with the FCC's conclusion that the appropriate method for cost recovery should be only from all carriers operating in areas where number portability is offered.

8. Paragraphs 218 and 219. With respect to the third subcategory of alleged shared costs, in Paragraphs 218 and 219 the FCC identifies two possible methods for recovering those costs:

> (1) through "usage charges assessed on those carriers that either access the database to upload number portability routing information, download such information, or directly query the database;" or, (2) "the upload, download, and/or per-query costs could be folded into the monthly charges assessed on the carriers using the databases which would be allocated in proportion to each carrier's gross telecommunications revenues.

The DCA notes that the costs in this subcategory relate to the ongoing provision of LNP. Therefore, with respect to the third subcategory of shared costs identified by the FCC, the DCA believes that to the extent that LNP is implemented using common databases, the most appropriate approach for funding those ongoing operations probably would be through a charge assessed on the provider that causes the cost, allocated in proportion to each telecommunications carrier's use of the facilities. In other words, the provider who initiates a database dip would be assessed a fee for that dip; database downloading costs could be recovered through a charge to each provider who receives that download. Any provider who requests a special activity, such as an audit, from which only that provider receives benefit, would be assessed the cost of that activity.

The FCC correctly notes in Paragraph 219 that "under current database approaches, there is no direct correlation between the number of queries made and the number of telephone numbers that have been forwarded because queries will be performed on all calls to a particular switch once any single number has been" ported. Indeed, the DCA views that characteristic as perhaps the most significant drawback to the Location Routing Number (LRN) number portability solution; it will generate a significant number of unnecessary database queries, resulting in unnecessarily increased costs for LNP -- a cost which consumers ultimately will have to pay. The best solution, of course, would be use of a LNP solution that meets the FCC's performance criteria, and requires database queries only on ported numbers. Until such a LNP solution is implemented, it appears that the most equitable approach to allocate the costs of database queries is on a fee-per-query basis.

C. Carrier-Specific Costs Directly Attributable to LNP.

9. Paragraph 221. The FCC seeks comment on its conclusion that:

> carrier-specific costs directly related to number portability include, for example, the costs of purchasing the switch software necessary to implement a long-term number portability solution. There are at least two ways of allocating these carrier-specific costs. First, we could require individual carriers to bear their own costs of deploying number portability in their networks. Second, we could require all carriers in a given region to pool their number portability costs, which then would be spread across all carriers providing and using number portability based on some allocator, such as gross telecommunications revenues or number of subscriber lines.

The DCA believes that a combination of these two methods may be the most fair method for allocating carrier-specific direct LNP implementation costs.

Some providers argue that each provider should bear its own costs incurred to implement LNP in its own network. Some have expressed a legitimate concern that it is competitively unfair to require providers to compensate other providers for LNP implementation costs which result from their less efficient systems and networks. While common contribution for shared costs, and individual absorption of individual costs, has some initial appeal, it too appears to fall short of the "competitively neutral" test.

The ILECs' wireline network is significantly larger than any CLEC's wireline network is now, or will be in the foreseeable future. Moreover, much of the ILECs' wireline network, having been installed over decades, may not contain the most up-to-date and cost-efficient technologies. In contrast, many of the CLECs will be establishing what portion of network infrastructure they choose to furnish with the newest, most up-to-date and cost efficient technologies. At least at the outset of competition, CLECs will need far fewer switches, central offices, and lines to serve their customers because their customer base will be smaller than the LECs' current customer base. For all of those reasons, the ILECs' cost to implement LNP probably will be several magnitudes greater than the CLECs' cost to implement LNP.

Requiring each provider to pay for all of its own network costs to implement LNP might be justifiable if the ILECs retained all of their current customers. However, the intended result of implementing a competitive marketplace is that at least some, and perhaps a significant portion, of the ILECs' customers will choose other providers.

Thus, at least for the first few years of local exchange competition, the ILECs are not likely to reap significant benefits from LNP. To the contrary, they are almost certain to lose at least a moderate number of their existing customers as a result of the availability of LNP. Therefore, at least initially, the benefits of LNP will not fall evenly across all local exchange providers.